

LAW OFFICES OF DALE K. GALIPO

Dale K. Galipo (SBN 144074)
dalekgalipo@yahoo.com
Cooper Alison-Mayne (SBN 343169)
cmayne@galipolaw.com
21800 Burbank Boulevard, Suite 310
Woodland Hills, California, 91367
Telephone: (818) 347-3333
Facsimile: (818) 347-4118

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SANDRA KIRKMAN, CARLOS
ALANIZ, individually and successors-
in-interest to JOHN ALANIZ, deceased,

Plaintiffs,

v.

STATE OF CALIFORNIA, RAMON
SILVA, and DOES 1-10, inclusive,

Defendants.

Case No. 2:23-cv-07532-DMG-SSC

*Honorable Dolly M. Gee
Hon. Mag. Judge Stephanie S.
Christensen*

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' EX PARTE
APPLICATION FOR AN ORDER
TO STAY CASE PENDING
RESOLUTION OF APPEAL**

Judge: Dolly M. Gee
Hearing: March 25, 2025
Time: 2:00 p.m.
Dept.: Courtroom 8C

FPTC: March 25, 2025
Trial: April 15, 2025

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 An interlocutory appeal typically “divests the district court of its control over
3 those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer*
4 *Disc. Co.*, 459 U.S. 56, 58 (1982). However, the divestiture of jurisdiction rule is a
5 judge-made doctrine, not based on statutes or procedural rules, and is “applied in a
6 ‘less stern’ manner than true jurisdictional rules.” *Rodriguez v. Cnty. of Los Angeles*,
7 891 F.3d 776, 790 (9th Cir. 2018) (citing *United States v. Claiborne*, 727 F.2d 842,
8 850 (9th Cir. 1984)). There is a well-established exception to the divestiture doctrine
9 that allows Courts to maintain jurisdiction over claims even after an appeal has been
10 filed insofar as the appeal is frivolous. *Peck v. Cnty. of Orange*, 528 F. Supp. 3d
11 1100, 1103 (C.D. Cal. 2021).

12 For the reasons below, as well as the reasons discussed in Plaintiffs prior
13 briefing (Dkt. 79), the Court should certify Defendants’ appeal as frivolous, deny
14 their *ex parte* motion to stay (Dkt. 78), and proceed to trial in this case.

15 On interlocutory appeal, the Ninth Circuit has “jurisdiction only to the extent
16 ‘the issue appealed concerned, not which facts the parties might be able to prove,
17 but, rather, whether or not certain given facts showed a violation of clearly
18 established law.” *Foster v. City of Indio*, 908 F.3d 1204, 1210 (9th Cir. 2018)
19 (internal quotations omitted); *Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) (“[I]nstant
20 appeal is not available . . . when the district court determines that factual issues
21 genuinely in dispute preclude summary adjudication.”).

22 Here, the Court’s qualified immunity ruling in this case was based on
23 accepting Plaintiff’s facts, including “that Silva shot Alaniz despite knowing that he
24 did not have a gun.” (Dkt. 75 at 13.) This fact is supported by Defendant Silva’s
25 own statements moments after the shooting, when he asked his partner what Alaniz
26 had in his hands. It is further reinforced by the fact that no other witnesses at the
27 scene believed Alaniz was armed, and Silva’s partner explicitly stated that the object
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1 in Alaniz’s hand looked nothing like a gun—comparing it instead to a Subway
2 sandwich. This Court found that Plaintiffs had produced sufficient evidence such
3 that a jury could find that Officer Silva knew Alaniz was unarmed when he decided
4 to use lethal force.

5 Defendants are now appealing the Court’s qualified immunity ruling based on
6 their theory that *Silva mistakenly perceived Alaniz was armed* and his mistake was
7 reasonable. The problem is this theory completely contradicts Plaintiffs’ version of
8 the facts, and thus, their appeal is entirely without merit.

9 The law is clear: interlocutory appeals not for second-guessing a trial court’s
10 determination that there is a genuine issue of fact. *Kennedy v. City of Ridgefield*, 439
11 F.3d 1055, 1060 (9th Cir. 2006) (holding that there is no jurisdiction over an
12 interlocutory appeal that merely disputes the existence of genuine issues of material
13 fact); *Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 945 (9th Cir. 2017) (“Our
14 jurisdiction does not extend to all denials of qualified immunity on summary
15 judgment. We do not have jurisdiction to decide whether there is a genuine issue of
16 material fact.”); *Ames v. King Cty.*, 846 F.3d 340, 347 (9th Cir. 2017) (“Where the
17 district court has determined the parties’ evidence presents genuine issues of
18 material fact, such determinations are not reviewable on interlocutory appeal.”);
19 *Foster*, 908 F.3d at 1210; *Ortiz*, 562 U.S. at 188.

20 If the question were whether the disputed factual issue were “material,” the
21 Ninth Circuit would likely have jurisdiction on interlocutory appeal. *Hart v. City of*
22 *Redwood City*, 99 F.4th 543, 548 (9th Cir. 2024)(“because determining the
23 materiality of disputed facts is a question of law over which we have jurisdiction. ”)
24 But materiality is not an issue here. It is uncontested that Officer Silva is not entitled
25 to qualified immunity if he did not believe Alaniz was armed. Plaintiffs explicitly
26 made this argument in their motion to deem the appeal frivolous, (Dkt. 79 at 6–7, 9
27 (“Defendants appear to agree that if Silva knew Alaniz was unarmed, qualified
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1 immunity would not apply.”), and Defendants have not challenged that view. (Dkt.
2 78 and Dkt. 110.)

3 Because Defendants’ appeal is fundamentally based on a challenge to the
4 Court’s determination that it is a genuine factual dispute whether Silva *knew* at the
5 time of the shooting that Alaniz was unarmed, their appeal is not appropriate for
6 resolution on interlocutory appeal, and their arguments to the contrary are blatantly
7 contradicted by the law in this circuit.

8 For the foregoing reasons and the reasons discussed previously (Dkt. 79),
9 Plaintiffs respectfully request that this Court certify Defendants’ appeal as frivolous,
10 retain jurisdiction, deny Defendants’ motion to stay, and proceed to trial.

11 Respectfully submitted,

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13 DATED: March 19, 2025

LAW OFFICES OF DALE K. GALIPO

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16 By: /s/ Cooper Alison-Mayne
17 Dale K. Galipo, Esq.
18 Cooper Alison-Mayne
19 *Attorneys for Plaintiffs*
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